

**C & D Batteries, Division of Eltra Corporation (Chicago Branch) and DuPage County General Teamsters and Chauffeurs Local Union No. 673, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.** Case 13-CA-21673

May 28, 1982

### DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND  
ZIMMERMAN

Upon a charge filed on October 22, 1981, by DuPage County General Teamsters and Chauffeurs Local Union No. 673, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on C & D Batteries, Division of Eltra Corporation (Chicago Branch), herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 13, issued a complaint on November 5, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on September 28, 1982, following a Board election in Case 13-RC-15709, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;<sup>1</sup> and that, commencing on or about October 13, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On November 23, 1981, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On December 15, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on December 29, 1981, the Board issued an order transferring the

proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

#### Ruling on the Motion for Summary Judgment

In its answer to the complaint, Respondent asserts that the National Labor Relations Board's failure to hold a hearing on Respondent's objections or review the entire administrative record deprived Respondent of due process of law. Respondent also denies that the requested wage, fringe benefit, and employment data, which it refused to furnish, are necessary for and relevant to the Union's function as exclusive collective-bargaining representative.

In his Motion for Summary Judgment, the General Counsel argues that all issues raised by Respondent were or could have been litigated in the prior representation proceeding and a hearing is not necessary in this matter, that Respondent's objections do not raise substantial or material issues which would warrant a hearing, and that there was no arbitrary action that would deprive Respondent of due process. With respect to Respondent's refusal to furnish wage, fringe benefit, and employment data, the General Counsel contends that such information is presumptively relevant and must be provided upon request unless the employer submits evidence sufficient to rebut the presumption. The General Counsel points out that in this case Respondent did not rebut the relevance of the information sought, and submits that Respondent's denial raises no genuine issue of material fact which would warrant a hearing.

Our review of the record herein, including the record in Case 13-RC-15709, discloses that the Union filed a petition on March 16, 1981. The parties entered into a Stipulation for Certification Upon Consent Election agreement. The election was held on May 8, 1981. The tally of ballots shows that four votes were cast for, and two votes were cast against, the Union with no challenged ballots. Respondent thereafter filed timely objections to the election and on June 12, 1981, the Union filed a motion to dismiss the Employer's objections. On June 24, 1981, the Regional Director for Region 13 issued his Report on Objections in which he recommended that Respondent's objections be overruled and that a certification of repre-

<sup>1</sup> Official notice is taken of the record in the representation proceeding, Case 13-RC-15709, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

sentative issue. On or about July 6, 1981, Respondent filed exceptions to the Regional Director's findings and recommendations.

Following a request by the Union by letter dated October 5, 1981, that Respondent engage in collective-bargaining negotiations with the Union, and provide the Union with certain wage, fringe benefit, and employment data, Respondent, by letter dated October 13, 1981, refused to provide the requested information or to recognize and bargain in good faith with the Union as the exclusive bargaining representative of its employees in the certified unit.

On December 29, 1981, the proceeding was transferred to the Board with a Notice To Show Cause why summary judgment should not issue. To this Respondent filed an answer dated January 11, 1982, urging denial of summary judgment and dismissal of the complaint because its objections to the election were valid and the Board had denied Respondent due process by failing to hold a hearing on the objections or to review the entire administrative record. Assuming that the Board does not dismiss the complaint, Respondent urges the Board to hold a hearing or at least review the entire administrative record.

Respondent cites *N.L.R.B. v. Claxton Manufacturing Company, Inc.*, 613 F.2d 1364 (5th Cir. 1980). There the court held that summary judgment was improperly granted where no hearing was conducted and the employer made sufficient showing of an atmosphere of fear and coercion which would tend to interfere with the election. In this case, however, Respondent has failed to show that an atmosphere of fear and coercion existed such as to require a hearing, based as it is on the assertion that an employee was coerced to change his vote in the election when he overheard two other employees say that the Employer had bribed him to vote against the Union in a prior election and would probably bribe him again.

Citing *N.L.R.B. v. North Electric Company, Plant No. 10*, 644 F.2d 580 (6th Cir. 1981), Respondent argues that it was denied due process when the Board issued its Decision and Certification of Representative<sup>2</sup> without reviewing statements taken by the Regional Director. But as the Regional Director noted in his Report on Objections, the remarks of the two employees, even if made as claimed by the employee who asserted that he changed his vote, cannot reasonably be construed as a threat. A *de novo* review would, therefore, not be appropriate in this case.

It is well settled that in the absence of newly discovered or previously unavailable evidence or spe-

cial circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.<sup>3</sup>

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF RESPONDENT

Respondent is a New York corporation maintaining an office and place of business in Lombard, Illinois, where it is engaged in the sale, distribution, and service of industrial lift truck batteries and chargers. In the course and conduct of its business operations, Respondent purchases and receives at its Lombard, Illinois, location goods and materials valued in excess of \$50,000 directly from points located outside the State of Illinois.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

### II. THE LABOR ORGANIZATION INVOLVED

DuPage County General Teamsters and Chauffeurs Local Union No. 673, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

### III. THE UNFAIR LABOR PRACTICES

#### A. *The Representation Proceeding*

##### 1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining

<sup>2</sup> Not reported in volumes of Board Decisions.

<sup>3</sup> See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

purposes within the meaning of Section 9(b) of the Act:

All full-time field representatives "B" employed by the Employer at its present location of 10 Eisenhower, Lombard, Illinois, but excluding office clerical employees, sales persons, office manager, service manager, branch manager, temporary and casual employees, guards and supervisors as defined in the Act.

## 2. The certification

On May 8, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 13, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on September 28, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

### B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about October 5, 1981, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about October 13, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since October 13, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

## IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of C & D Batteries, Division of Eltra Corporation (Chicago Branch), set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

## CONCLUSIONS OF LAW

1. C & D Batteries, Division of Eltra Corporation (Chicago Branch), is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. DuPage County General Teamsters and Chauffeurs Local Union No. 673, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time field representatives "B" employed by the Employer at its present location of 10 Eisenhower, Lombard, Illinois, but excluding office clerical employees, sales persons, office manager, service manager, branch manager, temporary and casual employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since September 28, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about October 13, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclu-

sive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, C & D Batteries, Division of Eltra Corporation (Chicago Branch), Lombard, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with DuPage County General Teamsters and Chauffeurs Local Union No. 673, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

All full-time field representatives "B" employed by the Employer at its present location of 10 Eisenhower, Lombard, Illinois, but excluding office clerical employees, sales persons, office manager, service manager, branch manager, temporary and casual employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, furnish the above-named labor organization with wage, fringe benefit, and em-

ployment data concerning bargaining unit employees.

(c) Post at its Lombard, Illinois, facility copies of the attached notice marked "Appendix."<sup>4</sup> Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

<sup>4</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

### APPENDIX

#### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with DuPage County General Teamsters and Chauffeurs Local Union No. 673, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All full-time field representatives "B" employed by us at our present location of 10 Eisenhower, Lombard, Illinois, but exclud-

ing office clerical employees, sales persons, office manager, service manager, branch manager, temporary and casual employees, guards and supervisors as defined in the Act.

WE WILL, upon request, furnish the above-named Union with wage, fringe benefit, and

employment data concerning bargaining unit employees.

C & D BATTERIES, DIVISION OF  
ELTRA CORPORATION (CHICAGO  
BRANCH)